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| Notice of Allowability | Application No.    | Applicant(s) |  |
|------------------------|--------------------|--------------|--|
|                        | 10/761,943         | PENG, HONG   |  |
|                        | Examiner           | Art Unit     |  |
|                        | Michael P. Stafira | 2877         |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to amendment filed 4/24/2006.
2.  The allowed claim(s) is/are 24-45.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some\* c)  None of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

|   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

**DETAILED ACTION**

**EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

- a. In claim 35, delete "the" in front of "shaking platform" and insert --a--;
- b. In claim 44, delete "the" in front of "shaking platform" and insert --a--.

*Allowable Subject Matter*

2. Claims 24-45 are allowed over the prior art of record.
3. The following is an examiner's statement of reasons for allowance:

Regarding claim 24, the prior art fails to disclose or make obvious an apparatus for on-line monitoring the cell concentration of biological culture medium in a shaking environment of an incubator/shaker having a probe fixture means for mounting and orientating at least one said light emission source and at least one said photodetector in fixed positions relative to each other, and for holding said container firmly without any relative movement with respect to said light emission source, said photodetector and a shaking platform of said incubator/shaker during the on-line monitoring process while said container and the probe fixture are under a continuously

shaking condition, and in combination with the other recited limitations of claim 24. Claims 25-34 are allowed by the virtue of dependency on the allowed claim 24.

Regarding claim 35, the prior art fails to disclose or make obvious a method for on-line monitoring the cell concentration of biological culture medium in a shaking environment of a incubator/shaker having the steps of preventing the relative movement of said container with respect to the position of the light emission source, the photodetector and the shaking platform of the incubator/shaker during the on-line monitoring process while said container and the probe fixture are under a continuously shaking condition, and in combination with the other recited limitations of claim 35. Claims 36-43 are allowed by the virtue of dependency on the allowed claim 35.

Regarding claim 44, the prior art fails to disclose or make obvious an apparatus for on-line monitoring the cell growth curve of biological cell culture in a shaking environment of an incubator/shaker having a probe fixture means for mounting and orientating at least one said light emission source and at least one said photodetector in fixed positions relative to each other, and for holding said container firmly without any relative movement with respect to said light emission source, said photodetector and the shaking platform of said incubator/shaker during the on-line monitoring process while said container and the probe fixture are under a continuously shaking condition, and in combination with the other recited limitations of claim 44. Claim 45 is allowed by the virtue of dependency on the allowed claim 44.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Stafira whose telephone number is 571-272-2430. The examiner can normally be reached on 4/10 Schedule Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Toatley can be reached on 571-272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael P. Stafira  
Primary Examiner  
Art Unit 2877

June 6, 2006